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1302443

# THE UNITED STATES OF AMERICA

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UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

*March 31, 2005*

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**APPLICATION NUMBER: 60/550,465**

**FILING DATE: *March 04, 2004***

**RELATED PCT APPLICATION NUMBER: *PCT/US05/07102***



Certified by

Under Secretary of Commerce  
for Intellectual Property  
and Director of the United States  
Patent and Trademark Office

11696 U.S. PTO  
030404

Attorney Docket No.: YATJ 8888US

**PROVISIONAL APPLICATION COVER SHEET**

This is a request for filing a PROVISIONAL APPLICATION under 37 CFR  
1.53(b)(2).

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030404

**INVENTOR(s)/APPLICANT(s)**

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**TITLE OF THE INVENTION (500 characters max)**

Digital Copyright Exchange

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**ENCLOSED APPLICATION PARTS** (check all that apply)

Specification	Number of Pages	10
Drawings	Number of Sheets	16
Other	Specify	

☒ Applicant Claims Small Entity Status

**METHOD OF PAYMENT**

A check or money order in the amount of:

☐ \$160.00 for large entity  
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is enclosed to cover the Provisional filing fees.

The Commissioner is hereby authorized to charge any additional fees or credit overpayment under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account 162201. *Duplicate copies of this sheet are enclosed.*

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The invention was made by an agency of the United States Government or under a contract with an agency of the United States Government.

☒ No  
☐ Yes, the name of the Government Agency and the Government Contract Number are:

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Respectfully submitted,



Nelson D. Nolte, Reg. No. 42,938

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## **Digital Copyright Exchange**

### **The Company**

In an era where the printing press has been replaced with a computer and the distribution chain has been replaced with the Internet we propose a method to provide harmony under the current legal system. Rather than trying to suppress 'everyman' copying and distributing copyrighted media, we prefer to create an environment that encourages this normal, instinctive activity AND compensates all parties appropriately.

The Digital Copyright Exchange (DCE) will obtain contracts for distribution for all major copyright holders of media that can be properly exchanged in digital format. This includes but is not limited to music, movies (digital video), photos, books, software and video games. Contracts need not be all inclusive for the DCE to operate or be profitable. The initial focus of the company will be on music as it is the current largest and most active market. These markets are fragmented and very large. The DCE has begun the process to patent/copyright the concepts involved as they are unique and solve huge current business issues.

The function of DCE is to allow the exchange of verified copyrighted material by any owner assuring that the copyright holder is compensated according to the contractual arrangements. The effect of this arrangement is to reduce or eliminate the need for copy protection (which does not work for digital files) and extensive legal prosecution (which is very time consuming, difficult and expensive). The DCE will provide the incentives and structures to decriminalize the exchange of copyrighted material.

### **The Operation**

The DCE will provide all the standard functions of an exchange for digital material. This includes matching buyer and seller, exchanging money and exchanging goods. The DCE will

allow for all current operations on the Internet (estimated to be more than 200) that legally sell copyrighted files and distribute with digital downloading. The DCE will provide for legal copyrighted file exchange on peer to peer networks.

### **The People**

The people involved all have extensive experience in exchange related data processing, company management and media contracts. These people also are experienced in creating successful major systems for economical amounts of capital. Systems capable of handling securities information at rates of 10,000 transactions per second (yes, per second). The combination of exchange experience with copyright knowledge is the reason that this solution is unique to this group.

### **The Challenge**

The challenge is to accomplish this task quickly rather than rely upon patent protection as the rate of evolution in the Internet environment is swift. The challenge is made easier by the pressure on the digital copyright holders to perform in economical ways.

### **The Payoff**

The payoff to the digital copyright business is reduced costs and increased sales. There are also subtle benefits of a better public image due to less need to use legal enforcement and the appropriate use of the technologies available.

The payoff to the owners of the DCE is volume of transactions through the DCE. The market for these products in digital form approaches \$100 billion. A one percent market share at five cents per transaction is estimated at \$50 million in revenue. Currently legal music downloads are in their infancy having grown from none to and estimated 30 million in eight months. The market for ring tones for cell phones was over \$3 billion (yes, billion) last year

worldwide. The market for legal digital music singles copies delivered on the Internet began in April 2003 so the marketplace is less than a year old.

### **Digital Media Exchange**

#### **Primary Concepts:**

1. The right of every legal owner/purchaser of the digital copyrighted file to become a seller via the Digital Copyright Exchange functions. This additional right will allow the Exchange to provide a platform that a current holder of a verified original file can resell that file under the condition that the copyright holder is paid in the transaction. This provides an entirely new and expanded method for the copyright holder to be paid for remotely produced copies and remotely distributed files at no cost to the copyright holder.
2. The compensation of the purchaser/seller of the digital copyrighted file upon its transfer within the processes of the Exchange in a way that the copyright holder also is compensated. This reduces the incentives to share or transfer files illegally. It also reduces the need to protect the file from reproduction for sharing or resale.
3. The use of the Exchange processes for legal copyrighted file transfer within a peer to peer network in addition to any other network configuration.
4. The distribution of digital copyrighted files from the Exchange for the benefit of the seller in lieu of the transfer of the seller's file to the buyer. This provides for the error and corruption (of any kind) elimination in the transfer of files. It also assures the legality of the transfer in a simple unique way.
5. The reference from other on line stores of legal owners of copyrighted files to the Exchange in an fully automated manner.

6. The verification of legal file ownership by the Exchange prior to acceptance of the owner as a legal reseller of the copyrighted file.

The use of the Exchange to perform all the functions of transfer for copyrighted digital files, including all the functions of an exchange applied to copyrighted digital files. These include but are not limited to legal transfer, file verification, price discovery, file delivery, money transfer.

### **Objective**

To form a structure for allowing commerce exchange of copyrighted files (and other files where there is a fee due to the owner). This structure will compensate the copyright owner and the seller completely within the existing laws. The Media Exchange will provide the smooth transition and incentive for the elimination of illegal file sharing. The types of files include, but are not limited to, music, movies, books, software and photos. The Media Exchange will be paid a small fee for each file exchange. The Media Exchange will verify for all sides of the transaction that it is legal and the file is correct and without faults as well as the payment being correctly made to all properly represented parties. It is simply a structure that will operate as all exchanges do, to facilitate the legal transfer of assets and money.

### **Background**

As in all industries the technology has reduced the cost factors and provided new avenues of production and commerce unavailable previously. The lower cost of producing and distributing digital media has begun to revolutionize the process in which movies and music are made as well as distributed and purchased.

Copyrighted material is being copied and shared through physical digital copies and Internet file transfers. This has been most prevalent in the illegal sharing of MP3 files converted

from CDs or other original sources. As the number of high speed Internet connections has increased the ability to accomplish file transfers of larger files movies from DVDs has also become a target of illegal file sharing.

Copyrighted material owners retain the right to control the distribution of their copyrighted material. With the advent of digital material (either original or copied from the original) that generally loses not quality with each copy and an inexpensive transmission facility within the Internet file sharing has exploded in popularity. The Internet has also provided some identity protection.

The copyright holders have generally been unable to negotiate a secure method of providing digital material. This has led to a feeble cat and mouse game of securing and breaching security. The DMCA (Digital Millennium Copyright Act) of 1998 has been mostly ineffective in eliminating the problem. It provides for individual copying of copyrighted digital material for personal use, such as back up. Many of the copies currently shared are of low quality as they are obtained from the analog output of the digital file and may be incomplete or from live performances recorded by the individual illegally. Current computer systems and legal software applications make it relatively inexpensive for the individual to copy a CD or DVD into a format that is compressed from the original with little or no loss. This allows the user to legally backup or transfer the files to the popular iPod music player or similar devices. Generally that same file can be shared with or downloaded by others also.

Services like Apple Computer's iTunes, which sells individual songs for 99 cents has been very successful (selling over 30 million copies in less than 8 months) in beginning to reverse the illegal file sharing growth. There are several other services that are currently selling songs (delivered by downloading MP3 files) in this way. They include services that have been in

this area for a while as well as the reincarnation of Napster, which let the technological genie out of the bottle in this area. Even Wal-Mart has announced a service similar to iTunes and, of course, for 88 cents a song. So price competition has already begun to creep in the market place. The primary goal of the copyright holders in their quest to eliminate illegal sharing of their digital works is to eliminate the peer to peer network operations facilitation of file sharing. This area has won court cases under the general premise that the service, such as KaZaA, Bearshare and the like, only provide the software for sharing. Since they are not in the loop or central to the process as Napster was, they are not responsible for or able to identify any of the activity of their application customers. Court cases are still being pursued in this area. Other cases being pursued attempt to hold the ISP (Internet Service Provider) responsible for user identification. These have only had limited success so far. All this is very expensive for all parties, particularly the copyright holder.

Another area that this process has exposed is the difficulties with the contracts between the music labels and the music performer and songwriter. Generally it is shown that the music label takes the majority of the gross income leaving small or no money for the creative element. The contracts are restrictive and it has been difficult for originators to be heard or seen without the label or studio connection. The distribution on the Internet has provided an avenue for anyone to expose their material without the restrictions and higher cost previously endured.

There is one additional important aspect of this issue. The copyright holders claim large amounts of lost sales based on the amount of illegal file sharing that is thought to be taking place. This is based in part upon the decline in their revenues after years of increases. Customers simply say that the copyright holders are charging too much, not providing the product in the manner that they would buy and generally not providing good product while

locking out smaller market artists. Several studies have been made to verify what the real situation is. None are definitive but the result is most likely all the above. There are indeed lost sales. The copyright holders did not have the ability to obtain some types of sales in the first place. One of these sales types is the single song of an album (CD) for which Apple has demonstrated a large market. Another is the sale by the purchaser of the copyrighted material to another person. This secondary sale, if accompanied by the original physical media, is legal and the copyright holder receives no compensation. If the original purchaser retains a copy for his own use it is probably undetectable and unenforceable. However, the sale would be perfectly legal and supported by Amazon and eBay who do not allow file transfers as sale deliverables. The seller is compensated. The buyer pays something. Amazon or eBay receive a fee but the copyright holder gets nothing for the secondary sale. This has the potential to halve the copyright holders' revenue. The file sharing on the peer to peer networks is the extension of this idea without the money changing hands.

At issue here is extraordinarily low marginal cost of producing a copy of the digital original and distributing it widely.

### **Operation**

The operation of the Media Exchange is simply an extension of the use of available technology organized in a way to accommodate the changes that are taking place in the transfer of ownership of digital media. There are many examples of similar successful extensions in other industries like Amazon, eBay, on line security brokers like Datek, automated security exchanges like Island and International Security Exchange (ISE). Inexpensive and free software and operating systems like Linux would not exist without the existence of the Internet for collaboration, production, marketing, distribution and customer service. In each of these cases

the previous organizations or competitors did not cease to exist, they changed and found their place in the reorganized order of things. As in all other industries the Media Exchange can flourish in a marketplace with many competitors similar to the other referenced participants.

The Media Exchange will contract with the copyright owner to obtain a correct verifiable copy of the media as well as the resale rights. This is no different than the current contracts with Apple and others currently. The agreements will have additional rights however. These additional rights will allow the Media Exchange to provide a platform that a current holder of a verified original file can resell that file under the condition that the copyright holder and the seller are paid in the transaction. This provides an entirely new and expanded method for the copyright holder to be paid for remotely produced copies and distribution at no cost to the copyright holder. The Media Exchange will receive a small fee on each transaction.

The incentive for the reseller (the purchaser of the original copyrighted media) is to receive compensation with little or no cost for something that he currently gives away. Not everyone who is sharing files will participate initially. As the incentive to receive compensation and the risk of illegal activity rises more will participate. As more participate and the process becomes well established the illegal market place will diminish as the legal market place grows. Since it is legal users will have little fear of being identified, as is now the case in the peer to peer arena.

All current users of peer to peer networks, current resellers like Apple's iTunes and newcomers like Wal-Mart can participate. The easiest method to facilitate their participation is a small plug in application to the current user application program. It is clear that one person purchasing one copy of a copyrighted work can supply the remaining retail demand in this way if every buyer chooses to purchase from that verified seller. This is the position of Apple's iTunes

currently. However, this is unlikely to occur due to the diversity of the market place in preference, service, and access. It is also clear that the price will quickly move to the most efficient location. This is good for all. It means more sales for the sellers and their beneficiaries and better prices for the buyers of goods. There will be considerable adjustment on all sides. The most beneficial adjustment will be the reduction in illegal activity caused by lack of adjustment to new technology by the copyright holders and the reduction in price for consumers while protecting the copyright holders' rights.

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## DCE Value Cycle

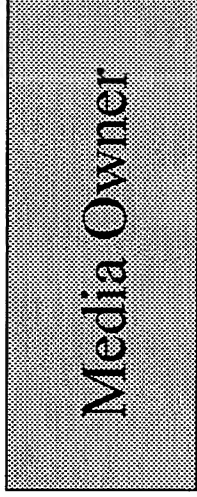
### Individual

An individual can purchase a single digital media file from many sources. In every case the purchase makes the individual a legal owner of the copyrighted work.

Technology has changed the economics of the copyrighted digital media file. The cost of reproduction and distribution have been reduced to very close to zero. These changes have created great difficulties to those that resist and great opportunities for those that embrace these changes.

Just like the events following the invention of the printing press the proper application of technology allows for the dramatic expansion of the market for copyrighted digital media files.

## DCE Value Cycle

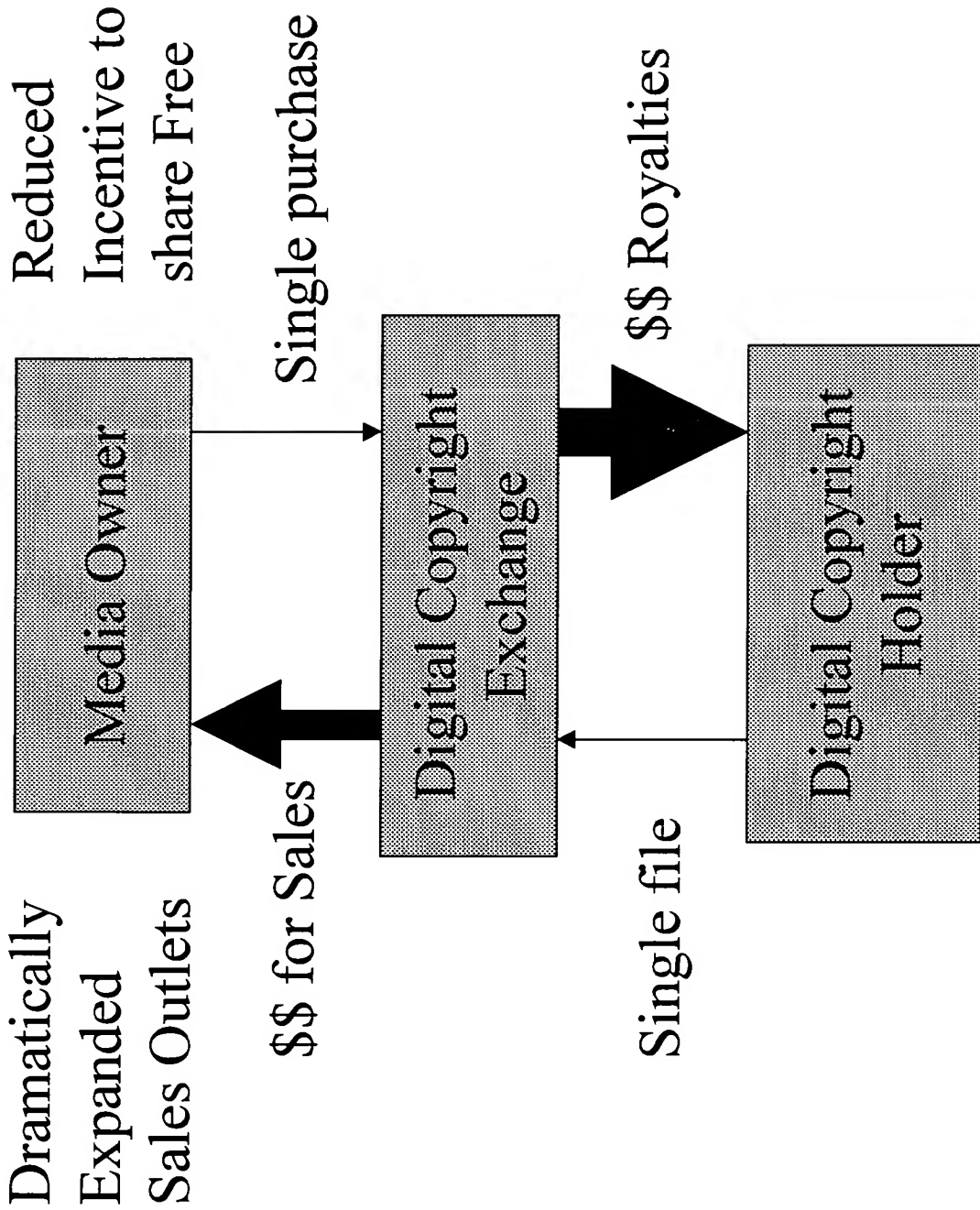


Every individual who has purchased a copyrighted digital media file is in the same position to reproduce and distribute the file as the original copyright holder.

What is missing is the equivalent ability to assure the quality of the file and pay the original creator and holder of the copyright.

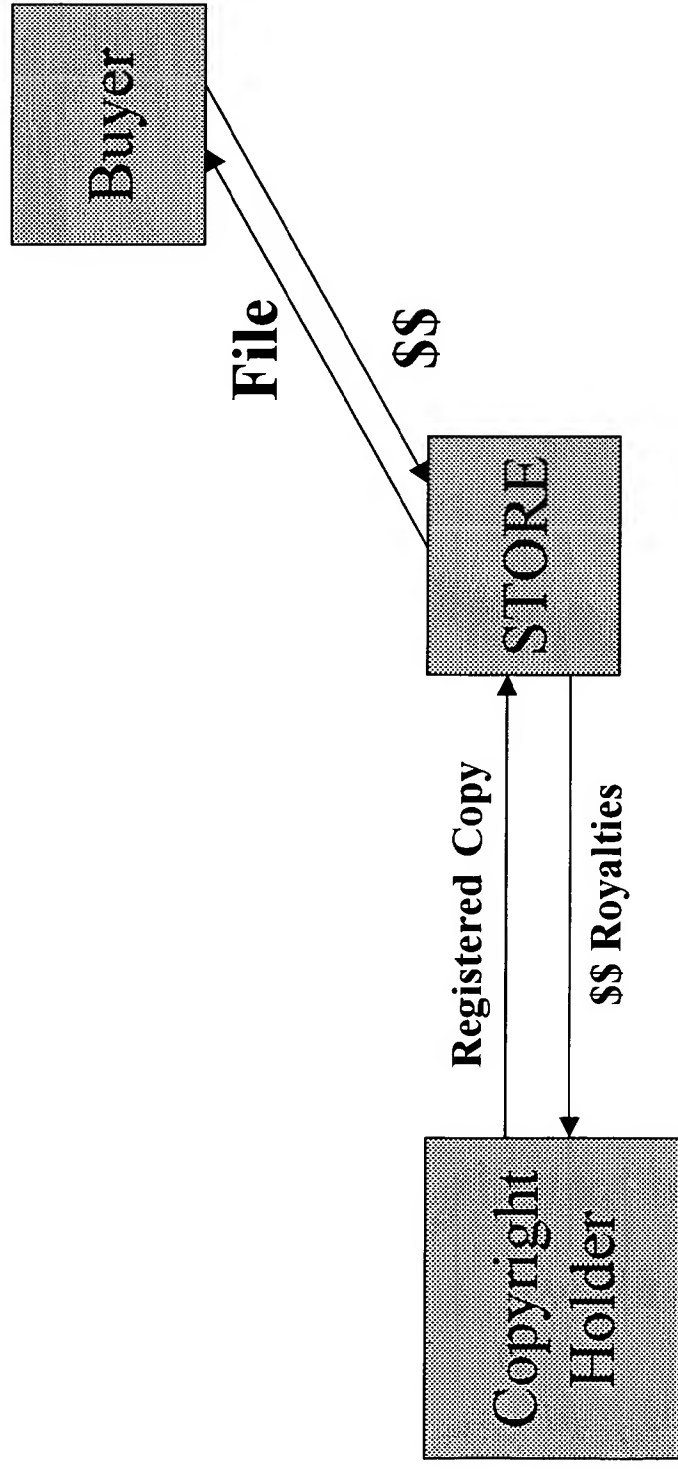
The Digital Copyright Exchange (DCE) provides that missing link.

DCE Value Cycle



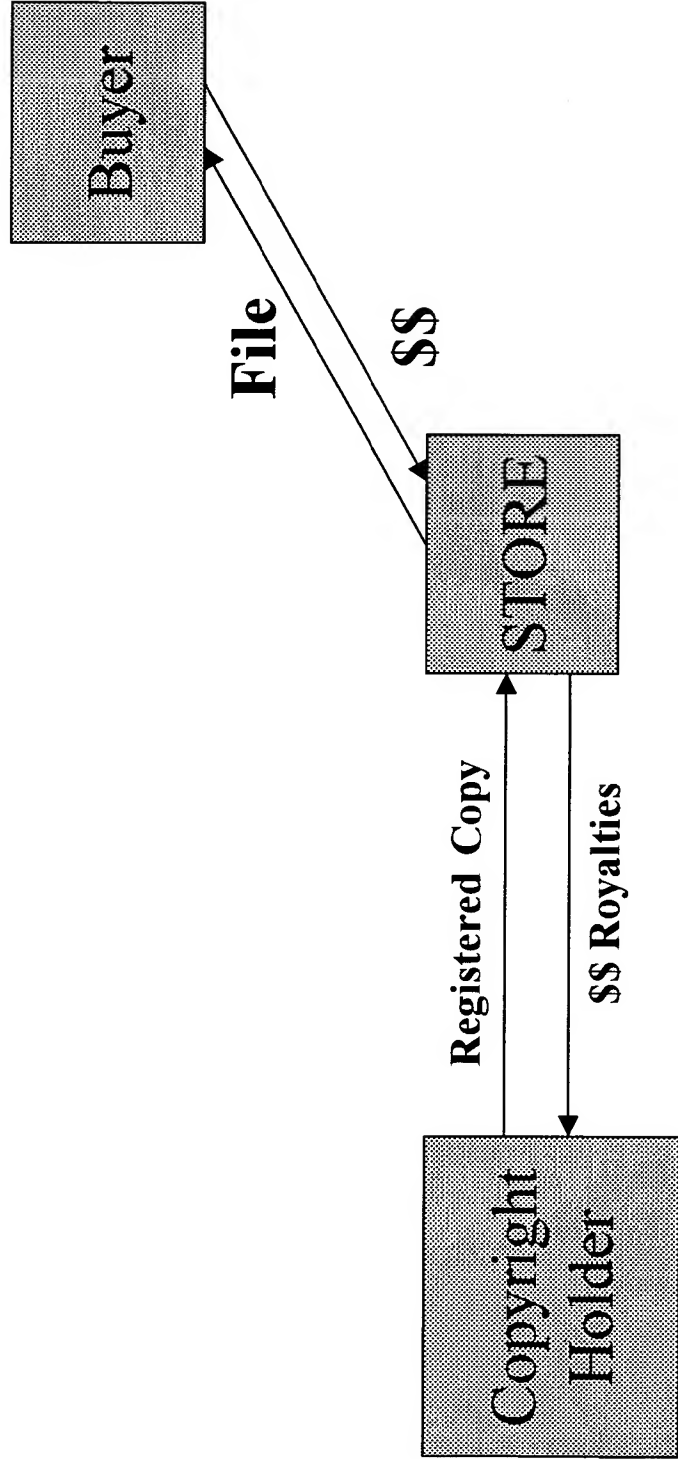
DCE – Digital Copyright Exchange

# Current Physical Store

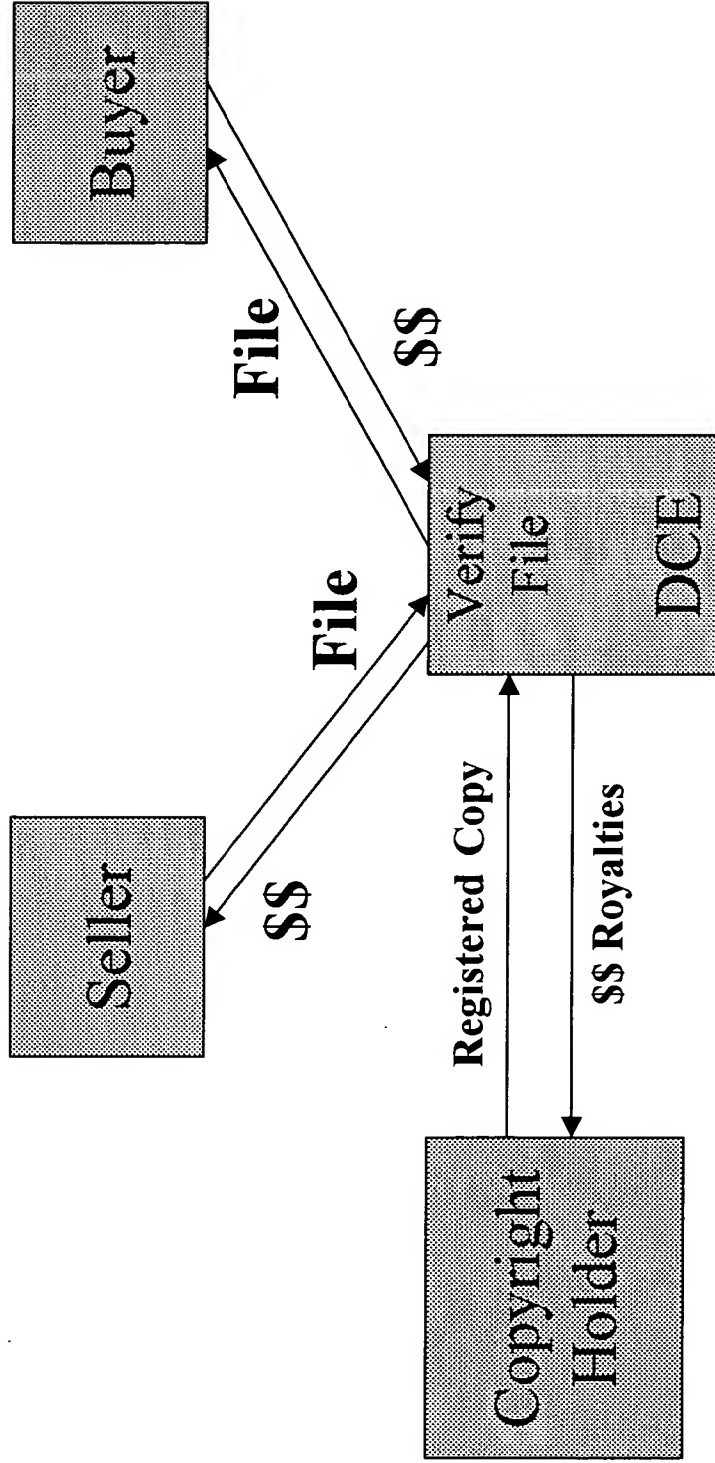


DCE – Digital Copyright Exchange

# Current Internet Store

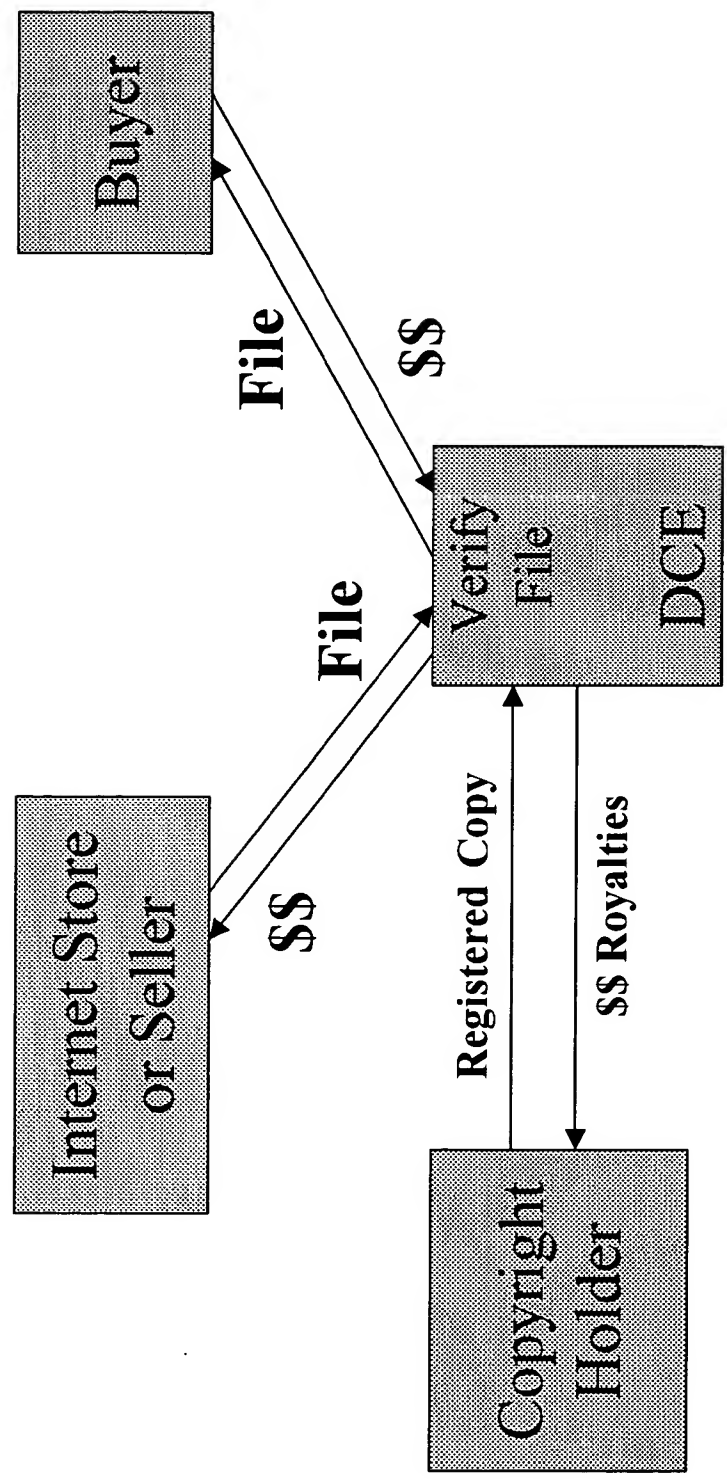


# DCE – Digital Copyright Exchange

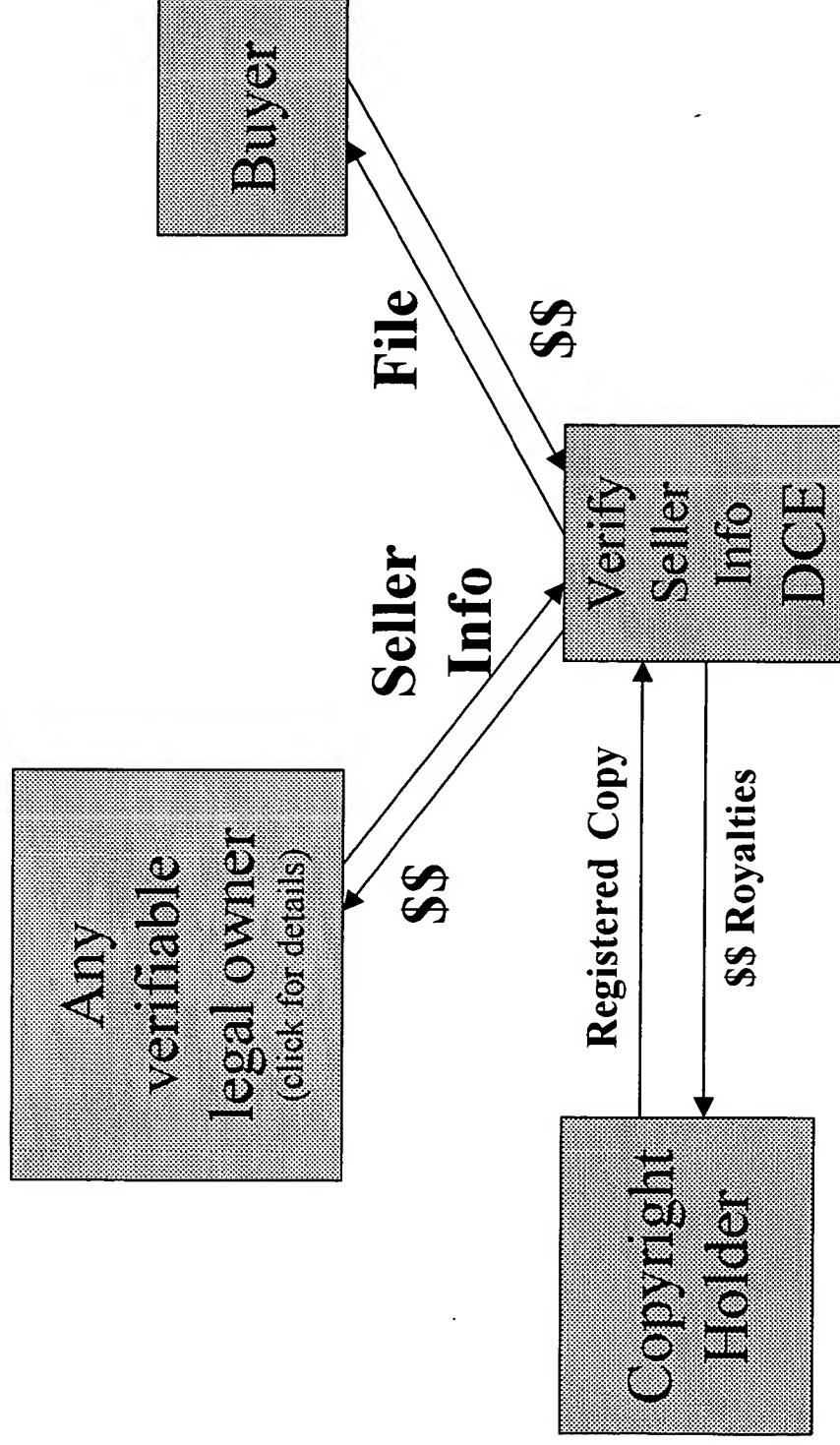


# DCE – Digital Copyright Exchange

## Include Current Internet Stores



## DCE – Digital Copyright Exchange - Detailed Flow



## DCE – Digital Copyright Exchange - Sellers Types



**Previous DCE Buyer now becomes a Seller**



**Internet Store with copyright sales referrals**



**Internet Store without copyright sales referrals**



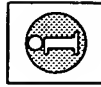
**Individual with legal copyright material**



**Individual without legal copyright material**



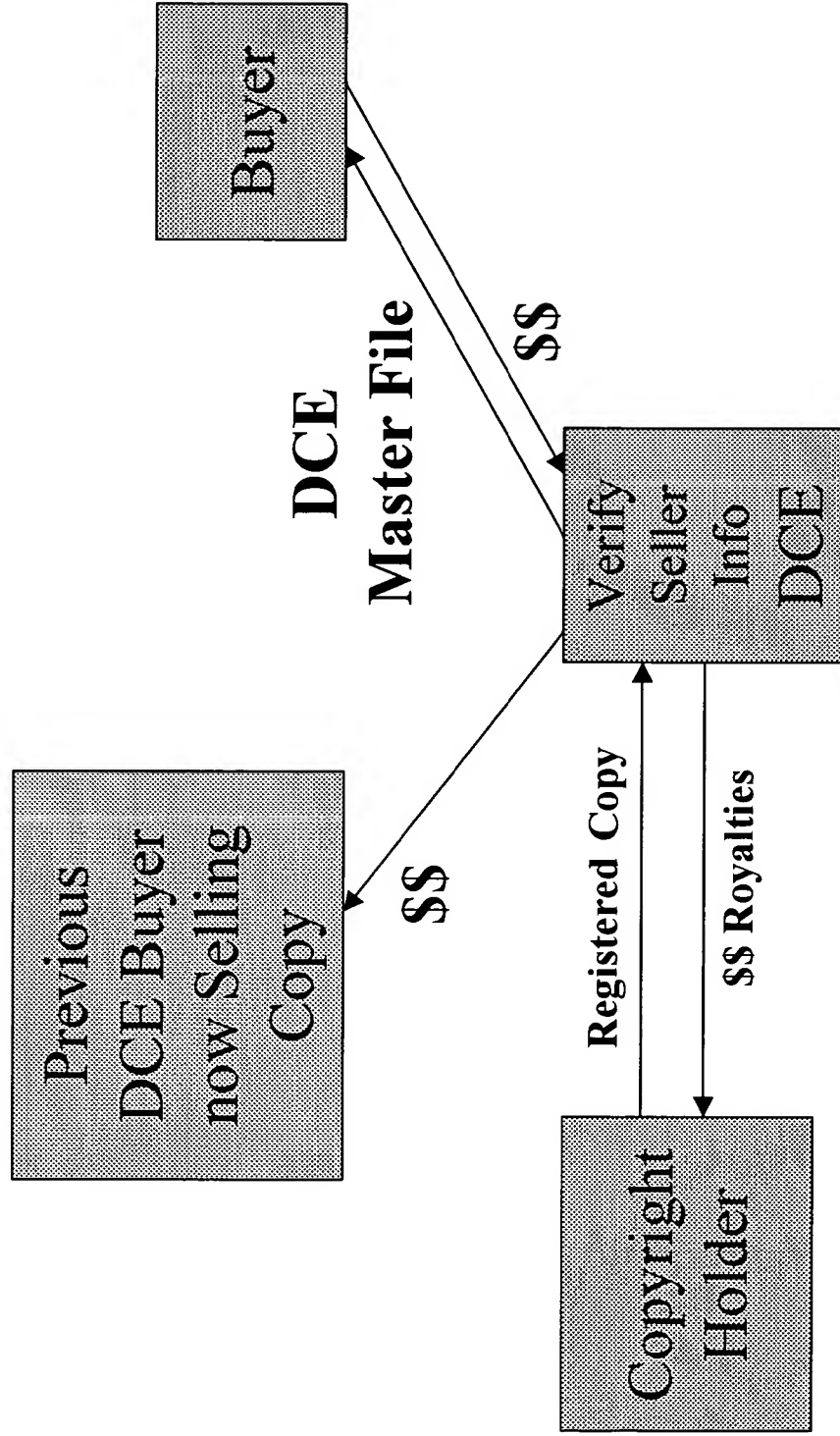
**Peer to Peer Network Participant**



**Physical Media Sales**

## DCE – Digital Copyright Exchange

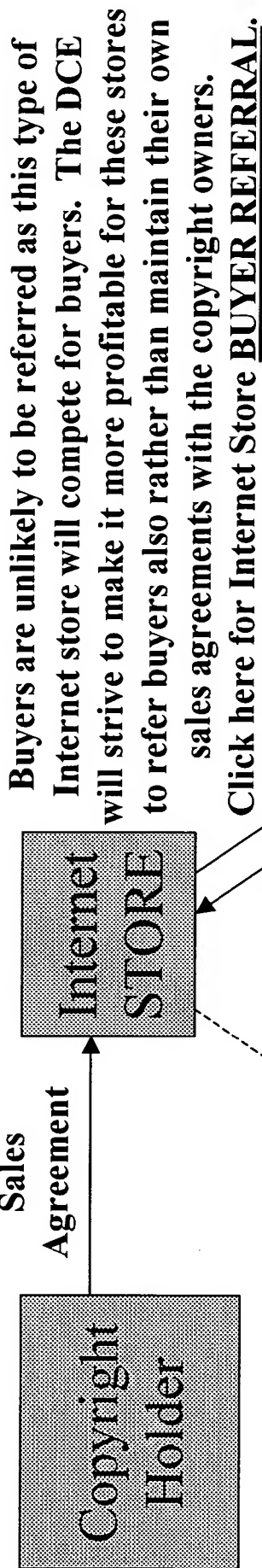
### Previous DCE Buyer now becomes a Seller



Menu

## DCE – Digital Copyright Exchange

### Internet Store WITH copyright sales referrals



Alternative Seller Payment

Seller & File Info

File

\$\$

Registered Copy

\$\$ Royalties

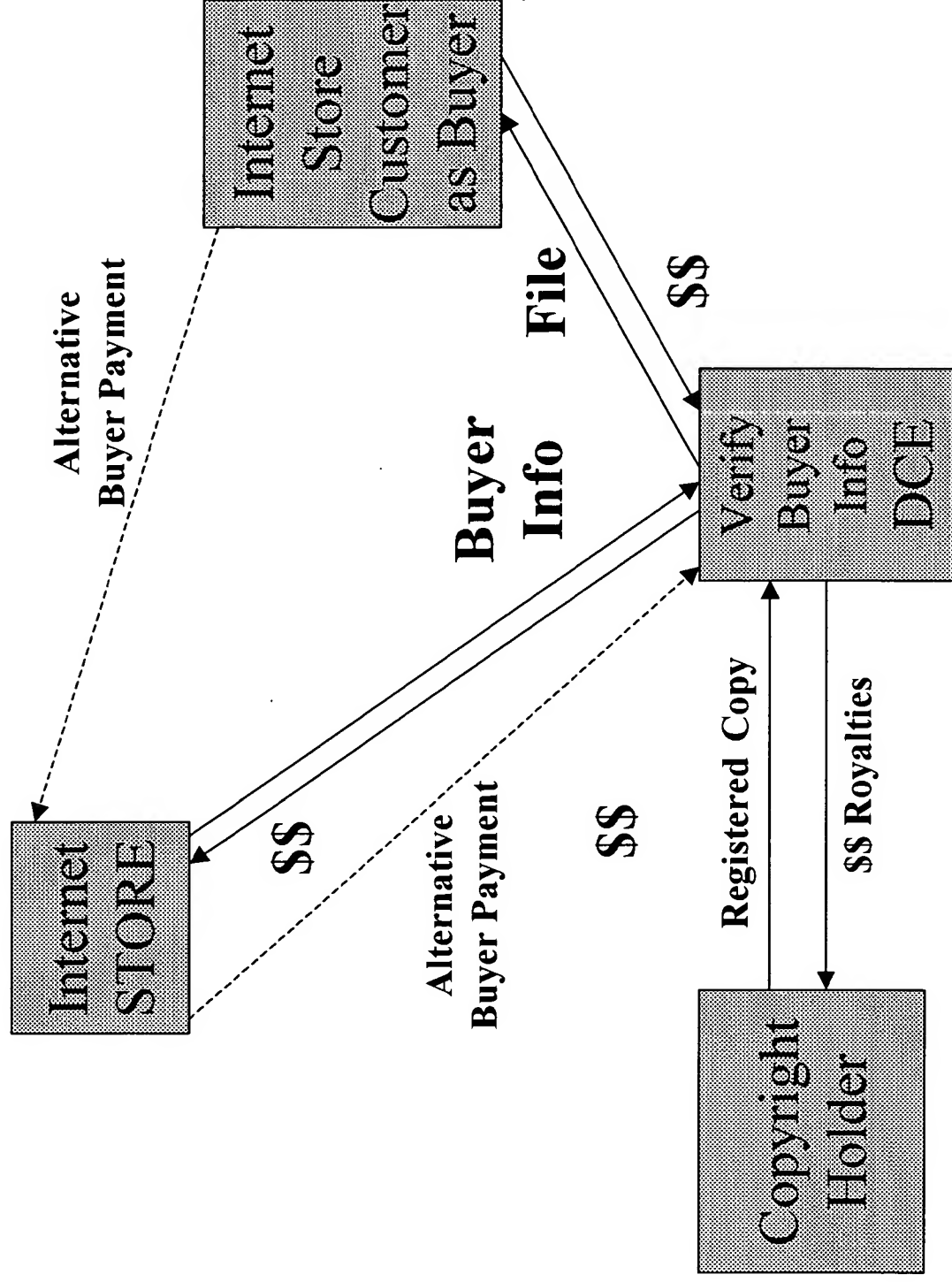
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Menu

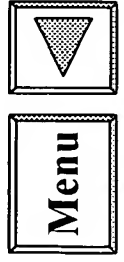
Example: iTunes, Music Match, Napster

## DCE – Digital Copyright Exchange

# Internet Store **WITHOUT** copyright sales referrals



**Example: Amazon, eBay, physical sales stores only**



## DCE – Digital Copyright Exchange

### Individual WITH legal copyright material

**Any material that is exchanged through the DCE will be verified as correct against the master files**

**held by the DCE from the copyright holder.**

**Only files that are verified can be part of a transaction  
on the DCE.**

**All files downloaded by the Buyer will come from the master file  
to avoid any possibility of transmitting  
incorrect files, corrupted files or infected files.**



**Example: Physical media owner**

## DCE – Digital Copyright Exchange

### Individual WITHOUT legal copyright material

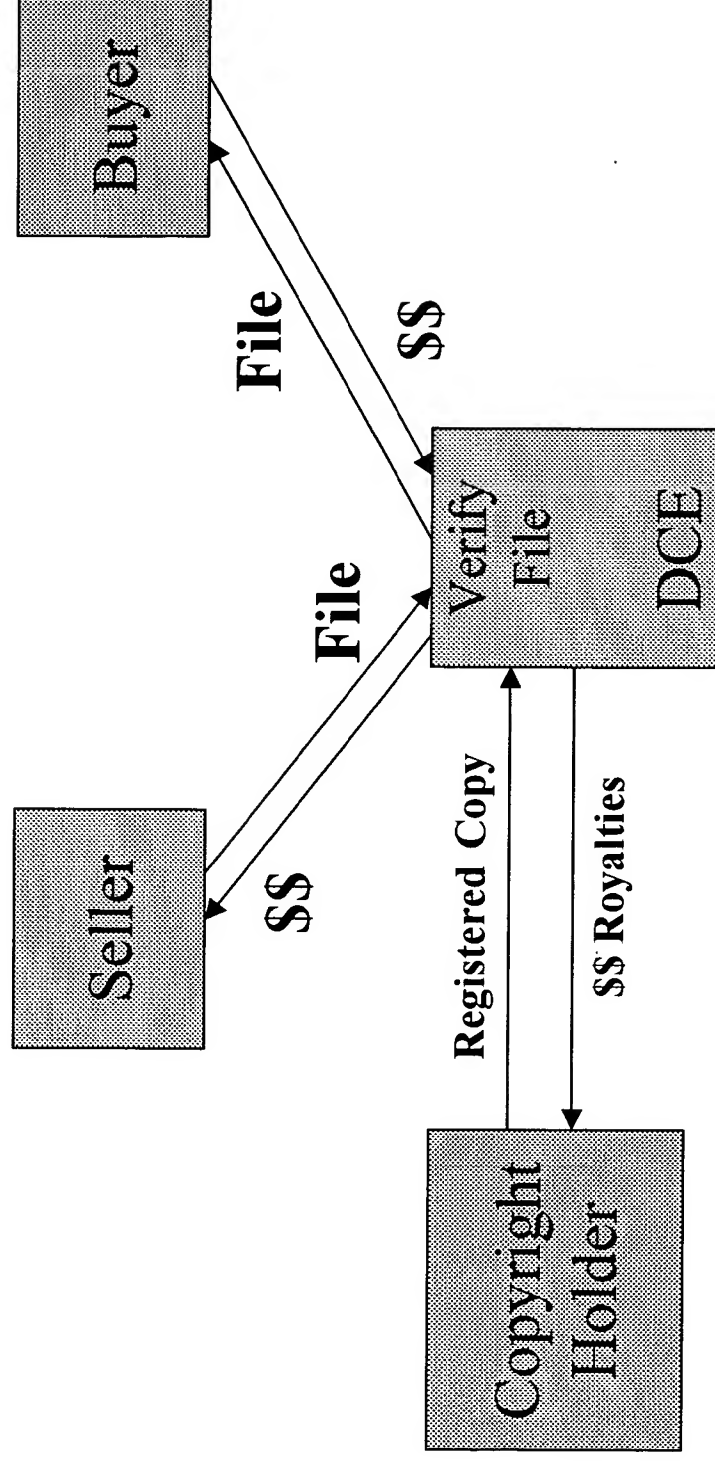
**We suggest that the copyright holder establish an amnesty  
with current participants in the P2P world  
and others with illegal copies of copyrighted material  
rather than pursue costly litigation through the legal system.  
The DCE will bring these individuals into legal compliance  
by their participation on the DCE.**

**The DCE will make provide no information on  
individual customers to any copyright holder other than  
summary sales information.**

## DCE – Digital Copyright Exchange

### Peer to Peer (P2P) Network Participant

**Seller or Buyer or both on Peer to Peer Network. DCE on P2P Network.**  
**All participants and files verified by DCE. All on P2P have DCE Plug In Application.**  
**Files ONLY transferred from DCE to Buyer P2P.**



See  
Also

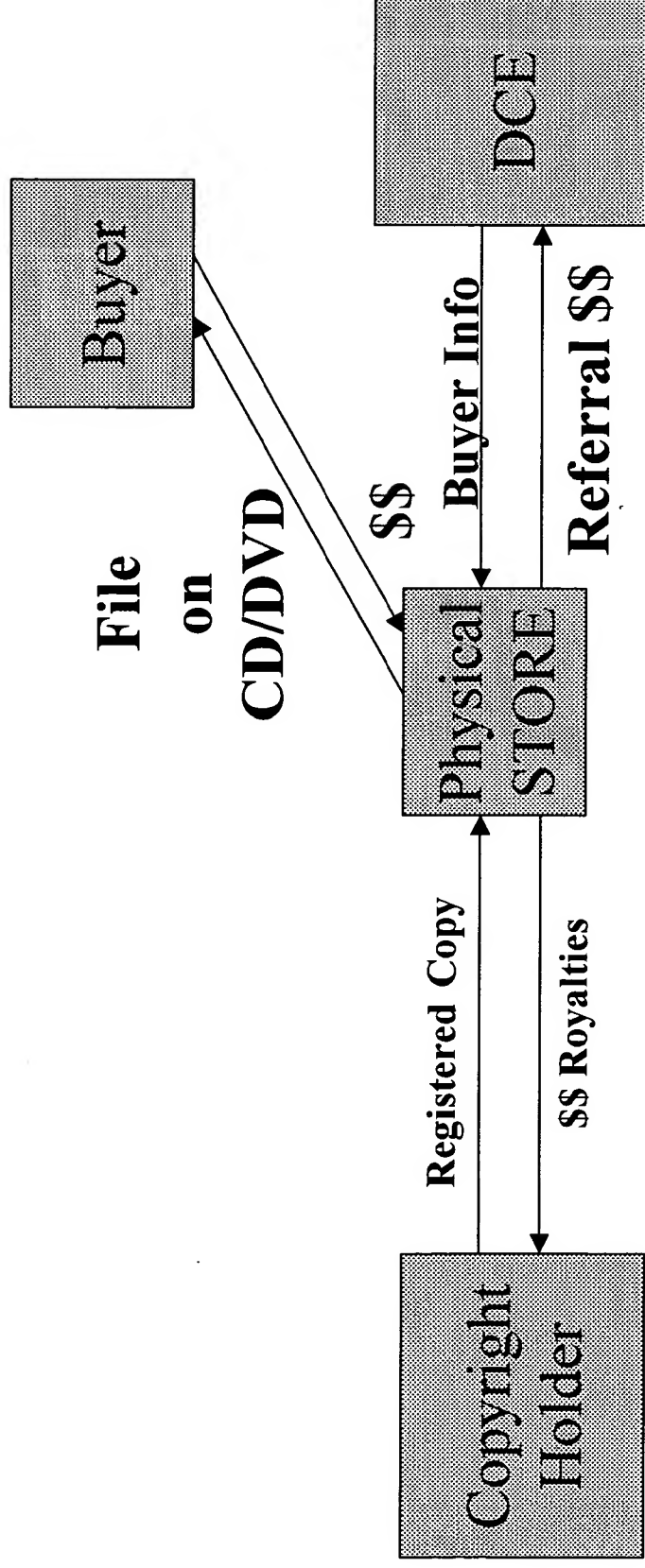
**DCE Buyer becomes Seller**

Menu

**Example: Kazaa, Bearshare, Gnutella**

## DCE – Digital Copyright Exchange

### Physical Media Sales



Menu

**Example: Amazon, Wal-Mart, eBay, brick & mortar**